

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CAUSE OF ACTION

2100 M Street N.W., Suite 170-247
Washington, D.C. 20037,

Plaintiff,

V.

INTERNAL REVENUE SERVICE

1111 Constitution Ave. NW
Washington, D.C. 20224,

Defendant.

Case No. _____

Judge: _____

COMPLAINT

(For Compliance with 5 U.S.C. § 552 *et seq.*)

1. Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 et seq. (“FOIA”), plaintiff Cause of Action, Inc. (“CoA”) has requested records of and pertaining to requests by the President of the United States to defendant Internal Revenue Service (“IRS”) for third parties’ tax returns and tax “return information” made between January 1, 2009 and March 27, 2012.
2. CoA does not request the tax return and/or tax “return information” records themselves. Rather, CoA requests only records of and pertaining to requests by the President to the IRS.
3. However, the IRS has wrongly refused to disclose records of its communications with the President, claiming they fall within the scope of Internal Revenue Code (“IRC”) § 6103, and therefore, disclosure without proper authorization from the third party taxpayers is prohibited.
4. This claim, however, is baseless. Therefore, CoA has filed suit to compel the IRS’s compliance with FOIA.

JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331. It may grant declaratory relief pursuant to 28 U.S.C. § 2201, *et seq.* and award costs and attorneys' fees pursuant to 28 U.S.C. § 2412 and 5 U.S.C. § 552(a)(4)(E).

6. Venue is proper pursuant to 28 U.S.C. § 1391(e)(1)(C) and 5 U.S.C. § 552(a)(4)(B).

PARTIES

7. Plaintiff CoA, whose principal place of business is 2100 M Street N.W., Suite 170-247, Washington, D.C. 20037, is a nonprofit, nonpartisan organization that uses investigative, legal, and communications tools to educate the public on how government accountability and transparency protect taxpayer interests and economic opportunity. CoA intends to disseminate the requested records to its supporters and benefactors, government officials, appropriate news media, and to the American public at large, because these records are likely to contribute significantly to public understanding of Executive Branch operations and activities. CoA is empowered to undertake educational and other programs to promote and protect the public interest in connection with this and other matters.

8. Defendant IRS is a 5 U.S.C. § 552(f)(1) "agency" and an instrumentality of the United States. The IRS has possession, custody, and control of the records that are the subject of this Complaint, but has illegally denied CoA access to same.

FACTS

9. IRC § 6103 provides that, subject to certain exceptions, the IRS shall keep tax returns and "return information," as defined in the IRC and its accompanying Regulations, confidential.

10. IRC § 6103(g) authorizes the IRS to disclose tax returns and "return information" to the President of the United States.

11. On information and belief, the President did request from the IRS certain tax return(s) and/or “return information” between January 1, 2009 and March 27, 2012.

12. On March 27, 2012, CoA sent a FOIA request to the IRS seeking:

- a. All documents, including e-mail communications, between the President or White House staff and the IRS, its staff, or other relevant employees concerning a request for tax records under §6103(g)(1);
- b. All documents referring or relating to requests by the President or White House staff for copies of tax returns or tax return information made to the IRS or its employees and any subsequent response by the IRS or its employees.

(Exhibit 1.)

13. By letter dated May 15, 2012, CoA sent a follow-up letter to the IRS to inquire about its FOIA request as the IRS had not responded by the 20-day deadline. (Exhibit 2.)

14. By letter dated May 23, 2012, the IRS denied the CoA’s FOIA request, stating that FOIA exemption (b)(3) requires the IRS “to withhold information that is specifically exempted from disclosure by another law,” and that the requested information is specifically exempted from disclosure by 26 U.S.C. § 6103(a). (Exhibit 3.)

15. By letter dated June 13, 2012, CoA timely appealed the IRS’s May 23, 2012 denial, explaining that it did not seek third parties’ tax or “return information,” only records of or pertaining to communications *made by the President* concerning or relating to requests that he made for such information. (Exhibit 4.)

16. By facsimile dated August 6, 2012, CoA resent its June 13, 2012 appeal because the IRS Appeals Office claimed it had not yet received the appeal. (Exhibit 5.)

17. By letter dated August 7, 2012, the IRS denied CoA's appeal, stating that it was "satisfied that the specific information requested [fell] within the scope of IRC section 6103, and therefore, disclosure of any such information, without proper authorization, [was] prohibited."

(Exhibit 6.)

18. The IRS never addressed CoA's requested fee waiver.

COUNT 1

FOR VIOLATION OF FOIA

19. CoA repeats paragraphs 1 - 18.

20. Requests by the President to the IRS for third parties' tax returns and "return information" are not themselves "return information" as defined by IRC § 6103(b)(2).

21. Information relating to the President's requests for tax returns and/or "return information" is a matter of public concern because such information assists the public's understanding of Executive Branch operations.

22. CoA has exhausted applicable administrative remedies.

23. Because FOIA exemption (b)(3) does not apply in this case, the IRS's failure to disclose the documents requested by CoA violates FOIA, 5 U.S.C. § 552.

24. CoA is entitled to injunctive relief compelling disclosure of the requested records.

COUNT II

FOR A FEE WAIVER

25. CoA repeats paragraphs 1-24.

26. CoA has exhausted applicable administrative remedies.

27. Disclosure of the requested records will be likely to contribute significantly to public understanding of the operations and activities of the Executive Branch.

28. CoA has the ability to disseminate the requested information through its website, to news media, and through publishing of newsletters and emails to subscribers.

29. The IRS's failure to grant CoA's request for a search and duplication fee waiver violates FOIA, 5 U.S.C. § 552.

REQUESTED RELIEF

WHEREFORE, CoA respectfully requests that this Court grant the following relief:

- I. Enter an order:
 - a. Declaring that the IRS has wrongfully withheld the requested records;
 - b. Directing the IRS to search for all records responsive to CoA's request and then demonstrate that it employed appropriate search methods;
 - c. Directing the IRS to produce by a date certain all non-exempt records and a Vaughn index of all records withheld under claim of exemption; and
 - d. Declaring that CoA is entitled to a waiver of both search and duplication fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(I) and 5 U.S.C. § 552(a)(4)(A)(iii).
- II. Issue a permanent injunction directing the IRS to disclose and release to CoA all wrongfully withheld records.
- III. Maintain jurisdiction over this action until the IRS complies with the FOIA and all orders of this Court.
- IV. Award CoA's attorneys' fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E).
- V. Grant such additional and further relief to which CoA may be entitled.

Respectfully submitted,

s/ Karen M. Groen

KAREN GROEN (D.C. Bar No. **501846**)

CHIEF OVERSIGHT COUNSEL

Cause of Action

2100 M Street, NW

Suite 170-247

Washington, D.C. 20037-1233

(202) 507-5880 (telephone)

(202) 507-5881 (facsimile)

October 2, 2012